



1 without further notice, hearing or order. (ECF No. 437). The overbid procedures are detailed fully  
2 in the receiver's motion. *Id.*

3 28 U.S.C. § 2001(b) reads,

4 After a hearing, of which notice to all interested parties shall be given by  
5 publication or otherwise as the court directs, the court may order the sale of such  
6 realty or interest or any part thereof at private sale for cash or other consideration  
7 and upon such terms and conditions as the court approves, if it finds that the best  
8 interests of the estate will be conserved thereby. Before confirmation of any private  
9 sale, the court shall appoint three disinterested persons to appraise such property or  
10 different groups of three appraisers each to appraise properties of different classes  
11 or situated in different localities. No private sale shall be confirmed at a price less  
12 than two-thirds of the appraised value. Before confirmation of any private sale, the  
13 terms thereof shall be published in such newspaper or newspapers of general  
14 circulation as the court directs at least ten days before confirmation. The private  
15 sale shall not be confirmed if a bona fide offer is made, under conditions prescribed  
16 by the court, which guarantees at least a 10 per centum increase over the price  
17 offered in the private sale.

18 *Id.*

19 28 U.S.C. § 2004 reads, “[a]ny personality sold under any order or decree of any court of  
20 the United States shall be sold in accordance with section 2001 of this title, unless the court orders  
21 otherwise.” *Id.*

22 Defendant objects to the receiver's motion with five arguments. (ECF No. 445). First, the  
23 real and personal property are not subject to sale because they were obtained prior to alleged  
24 wrongdoing. Second, the receiver must offset the judgment against the defendant by the value of  
25 her property that has already been sold, which by defendant's calculations totals more than the  
26 judgment. Third, the receiver cannot sell the real or personal property because the receiver  
27 obtained only two appraisals of the real property and one appraisal of the personal property. Fourth,  
28 the receiver cannot sell defendant's property that has been exempted through defendant's amended  
claim of exemption (ECF No. 407). Fifth, if the receiver is authorized to sell the real and personal  
property, the receiver must distribute the proceeds traceable to her separate property to defendant.

29 Defendant's objections to the receiver's motion are without merit. This court has already  
30 held that the real and personal property at issue is subject to sale so that the receiver may satisfy  
31 the judgment against defendant. (ECF No. 317). And defendant has not presented competent  
32 evidence that the judgment against defendant was satisfied by prior sales of property connected to  
33 this litigation. Thus, defendant's first and second arguments are non-starters.

1                   Defendant's fourth and fifth arguments are similarly deficient. The receiver may not  
2 distribute proceeds to the defendant at this time, as any such distribution would be premature. (*See*  
3 ECF No. 317 at 3) (holding that the SEC will propose a distribution plan, which is subject to the  
4 court's approval for the funds and assets collected pursuant to the Final Judgment in this case).  
5 Further, defendant's exemption argument fails, as defendant has not properly exempted any  
6 personal property that is the subject of the receiver's motion. Defendant's exclusive reliance on  
7 the bankruptcy code to support its position is misplaced. Accordingly, the court will now consider  
8 defendant's challenges based on the statutes governing the receiver's sale of the real and personal  
9 property.

10                  The receiver's proposed appraisals presumptively satisfy the statutory requirement of three  
11 appraisals prior to the proposed sale of the real property. 28 U.S.C. § 2001. The receiver obtained  
12 two valuations from accredited appraisers and one valuation from a real estate broker. The relevant  
13 statute does not specify who must conduct appraisals. *See* 28 U.S.C. § 2001(b) ("... three  
14 disinterested persons to appraise such property . . ."). The court holds that the valuations submitted  
15 by the receiver can constitute appraisals for the purpose of satisfying the statutory requirements.  
16 In the present case, it is in the best interest of the estate to ratify the use of these three valuations  
17 if they are based on the reliable methods that the receiver describes in his motion. The estate will  
18 thus not be required to spend additional funds to appraise a home that three professionals have  
19 already valued and that has a bona fide offer for purchase and will be listed at a public auction  
20 before the purchase becomes final. *See id.* ("... the court may order the sale of such realty or  
21 interest . . . upon such terms or conditions as the court approves, if it finds that the best interests  
22 of the estate will be conserved thereby.").

23                  The receiver's motion also asks the court to include a factual finding that the proposed sale  
24 of the property for \$2,000,000.00 would satisfy the requirement of 28 U.S.C. § 2001(b) that the  
25 sale be for at least 2/3 of the appraised value of the home. The court cannot make a factual finding  
26 without reviewing the appraisals. Therefore, the receiver will submit the appraisals for *in camera*  
27 review, at which time the court will decide whether to appoint these proposed "three disinterested  
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1 persons to appraise" the real property for the purposes of 28 U.S.C. § 2001(b), and whether to  
2 approve the sale of the real property.

3 Regarding the proposed sale of the personal property, the receiver has satisfied the statutory  
4 requirements of 28 U.S.C. §§ 2001 and 2004. The receiver obtained an appraisal as to the value  
5 of the personal property. Further, the receiver claims that the purchaser of the real property may  
6 purchase the personal property, and if it does not then the receiver has obtained bids from two  
7 reputable auctioneers who will handle the sale of the personal property. The court holds that the  
8 receiver's proposed disposition is in the best interests of the estate, and will approve it according  
9 to 28 U.S.C. §§ 2001 and 2004.

10 The receiver next requests an order deeming notice of this motion to be sufficient under  
11 Local Civil Rule 66-5. (ECF No. 437). Local Rule 66-5 provides that unless the court otherwise  
12 orders, the receiver shall give all interested parties and creditors at least fourteen (14) days' notice  
13 of the time and place of hearings on applications for fees of the receiver. LR 66-5(d). The court  
14 has not scheduled a hearing on the instant motion, and finds that it is unnecessary to do so. Further,  
15 to the extent that Local Rule 66-5 applies here, the court finds that the receiver has given sufficient  
16 notice to creditors under the rule.

17 Accordingly,

18 **IT IS HEREBY ORDERED** that the receiver shall file with this court within seven (7) days  
19 a proposed order as referenced in its filings. (*See* ECF No. 437 at 22). The proposed order must  
20 explicitly appoint the three proposed appraisers by name, among the other required findings of  
21 fact, conclusions of law, and orders therein.

22 **IT IS FURTHER ORDERED** that the receiver shall, within seven (7) days, submit to the  
23 court for *in camera* review copies of: the appraisal performed by Tammy L. Howard and Matthew  
24 J. Lubway, the appraisal performed by W. Snow, and the written opinion of Greg Clemens as to  
25 the value of the property.

26 DATED September 21, 2017.

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UNITED STATES DISTRICT JUDGE